



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

May 17, 1961

Mr. J. Overby Smith, Chairman  
Industrial Accident Board  
Austin, Texas

Opinion No. WW-1059

Re: Whether the Industrial Accident Board has jurisdiction to consider the cost or expense of medical aid, etc., under the facts stated.

Dear Mr. Smith:

In your letter of recent date you requested the opinion of this office regarding whether or not the Industrial Accident Board has jurisdiction to consider the cost or expense of medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances (hereinafter referred to as "medical services") under the stated circumstances, in view of Section 5, Article 8307, Vernon's Civil Statutes, as amended by House Bill 433, Acts of the 55th Legislature, Regular Session, 1957, Chapter 397, Page 1186, Section 2.

You stated the facts as follows:

"In claim number T-13819, the claimant alleged injuries occurring on December 22, 1958. On September 7, 1960, the Board entered the first final award of this Board which found the claim to be compensable under the Act. The award ordered payment of compensation benefits and approved and ordered paid the cost and expense of various medical aid, hospital services, nursing, medicines and other items of expense presented to the Board.

"This award was timely appealed and a suit to set aside the award was timely filed in a District Court of competent jurisdiction. The claim was then tried 'de novo' before a jury and the first final judgment was entered by the court on February 10, 1961. This judgment

also found the claim to be compensable and ordered compensation benefits paid. The judgment also allowed and ordered paid each of the medical and hospital expenses which had been previously allowed by the Board's award as entered on September 7, 1960. The judgment, however, made no reference to certain hospital and medical expenses incurred by the claimant during the period from September 7, 1960 and the date the judgment was entered, February 10, 1961. On February 27, 1961 the claimant submitted to the Board for consideration certain medical and hospital expenses incurred and accrued between the period of September 7, 1960 and February 10, 1961. The claimant requested the Board to consider the liability of the insurance company for these incurred expenses."

The amendatory paragraph added to Section 5 by House Bill 433, reads as follows:

"Notwithstanding any other provision of this law, as amended, no award of the Board, and no judgment of the court, having jurisdiction of a claim against the association for the cost or expense of items of medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances furnished to an employee under circumstances creating a liability therefor on the part of the association under the provisions of this law, shall include in such award or judgment any cost or expense of any such items not actually furnished to and received by the employee prior to the date of said award or judgment. The first such final award or judgment rendered on such claim shall be res judicata of the liability of the association for all such cost or expense which could have been claimed up to the date of said award or judgment and of the issue that the injury of said employee is subject to the provisions of this law with respect to such items, but shall not be res judicata of the obligation of the association to furnish or pay for any such items after the date of said award or judgment.

After the first such final award or judgment, the Board shall have continuing jurisdiction in the same case to render successive awards to determine the liability of the association for the cost or expense of any such items actually furnished to and received by said employee not more than six (6) months prior to the date of each such successive award, until the association shall have fully discharged its obligation under this law to furnish all such medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances to which said employee may be entitled; provided, each such successive award of the Board shall be subject to a suit to set aside said award by a court of competent jurisdiction, in the same manner as provided in the case of other awards under this law."

You asked the following questions which we have rephrased:

1. Does the Board have jurisdiction to consider the cost or expense of medical services furnished to and received by the workman when such costs or expenses were incurred during the intervening period between the date of the Board's first final award and the date judgment was entered by the Court?

2. Does the fact that the Court's judgment does not refer to the medical services mentioned in question number 1 serve to give the Board jurisdiction over the cost or expense of such medical services?

3. Does the Board have jurisdiction to consider the cost or expense of such medical services while the appeal from the Board's order or award is pending before the proper court?

Regarding your first question, the Industrial Accident Board does not have jurisdiction to consider and rule on the cost or expense of medical services furnished to and received by the workman during such intervening period. It

is well-settled that once an award or order is appealed to the proper court, the court gains jurisdiction over all parties and issues involved in the controversy, the Board's order is vacated, and the Board is divested of all jurisdiction over the claim. Southern Casualty Co. v. Fulkerson, 45 S.W.2d 152 (Comm.App. 1932); Texas Employers Insurance Association v. John W. Nitcholas, 328 S.W.2d 338 (Civ.App. 1959); Industrial Accident Board v. Texas Employers Insurance Association, 342 S.W.2d 213 (Civ. App. 1961). In Southern Casualty Co. v. Fulkerson, supra, the Court stated as follows:

" . . . The legal effect of the institution of a suit by any interested party in a court of competent jurisdiction against all other parties before the board is to oust the board of any further jurisdiction over the case and to vest the court with jurisdiction over all parties and issues involved."

When claim number T-13819 was appealed, the Board's award was vacated and the Board's jurisdiction over such claim ceased. By such appeal the court gained jurisdiction over all parties and issues involved in such claim including the claim for medical services furnished to the workman prior to the date of the judgment. The Board would not have had jurisdiction over such claim for medical services prior to said amendment, and the amendment does not have the effect of conferring jurisdiction on the Board over such claim. With respect to the present case, the effect of the amendatory paragraph is to confer on the Board continuing jurisdiction to hear and determine the liability of the association for medical services furnished to and received by the workman, if any, after the date of the judgment.

The fact that the judgment in question does not mention the cost or expense of medical services received during the intervening period does not serve to broaden the Board's jurisdiction to cover these matters, and, therefore, your second question is answered in the negative.

As previously indicated once the Board's order or award is appealed to the proper court, the Board's jurisdiction over the controversy ceases and the court acquires jurisdiction to hear and determine all issues involved in the controversy, and, therefore, we answer your third question in the negative.

Mr. J. Overby Smith, page 5. (WW-1059)

S U M M A R Y

The Board does not have jurisdiction to hear and determine the liability of the association for the cost or expense of the medical services furnished to and received by the workman during the intervening period of September 7, 1960, to February 10, 1961, and the fact that the judgment entered on February 10, 1961, did not mention such items does not serve to broaden the Board's jurisdiction. While an award or order of the Board is pending before the proper court on appeal, the Board has no jurisdiction to hear and determine the liability of the association for the cost or the expense of medical services furnished to and received by the workman after the date of the Board's award but before the date of judgment.

Yours very truly,

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By 

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APPROVED:  
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